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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/634,285	08/05/2003	Juan C. Cendan	UF 10457-028	7082

29847 7590 09/26/2007  
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ORLANDO, FL 32801

EXAMINER
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HOUSTON, ELIZABETH

ART UNIT	PAPER NUMBER
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3731

MAIL DATE	DELIVERY MODE
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09/26/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Office Action Summary**

Application No.

10/634,285

Applicant(s)

CENDAN, JUAN C.

Examiner

Elizabeth Houston

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 27 June 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) 7-11 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date: \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

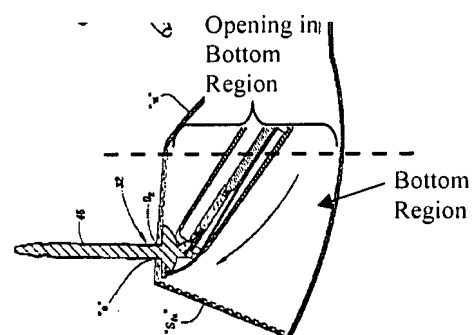
2. **Claims 1-6 are rejected under 35 U.S.C. 102(e) as being anticipated by Nolan et al (US 2004/0087977).**

3. Regarding claim 1, Nolan et al disclose the method substantially as claimed including the steps of isolating the upper stomach portion of a patient's stomach (see Fig. 16) to obtain an isolated upper stomach portion and introducing an anvil adapted for use with an anastomosis instrument through a side region of the isolated upper stomach portion. (Fig. 12 shows the anvil (32) being introduced through a side region of stomach tissue of the upper stomach portion. Alternatively, since the side region is not specified, the anvil and the delivery device are introduced into the stomach cavity through a side region that is the upper side.) The steps also include resecting the bowel, and connecting the resecting bowel portion and the upper stomach portion with a circular anastomosis instrument (paragraph 0015).

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4. Regarding claim 2, Nolan et al disclose isolating the upper stomach portion with a linear stapler in such a way that a protrusion is formed on a side region of the upper stomach portion (paragraph 0016).

5. Regarding claims 3, Nolan et al disclose that introducing an anvil comprises insertion of a surgical instrument through an opening in a bottom region of the upper stomach portion. (The bottom region of the upper stomach portion is depicted for example below. The surgical instrument is inserted though the opening that is created by the cavity of the bottom region of the upper portion of the stomach.) The surgical instrument has a flexible body (see Figs. 10 and 12 and Para [0063]) and a tip that can be flexed and roticulated (Para [0064] describes the pivot blocks (36 and 40) and pins (38 and 50) which provide for pivoting. Additionally as the anvil is pivoted (Para [0065]), the guide member 12 is inherently rotated as in Fig. 10.) The tip is adapted to releasably attach the anvil (Fig. 12 shows the anvil being released from the confinement of the guide member 12).



6. Regarding claim 4, the anvil is attached to the tip and carried through the upper stomach portion (Fig. 9 and 10) and positioned to rest in the opening (Fig. 12).

7. Regarding claim 5, the connecting step includes juxtaposing the upper stomach and bowel when a circular anastomosis stapling instrument is actuated (paragraph 0077), wherein the anvil is passed through the bottom region of the upper stomach region and the bowel portion during the actuation.

8. Regarding claim 6, after the anvil is carried through the upper stomach portion, the protrusion is excised (in Fig. 12 when the anvil is inserted through the tissue) and sealed (when the bowel is stapled to the stomach).

### ***Response to Arguments***

1. Applicant's arguments with respect to claims 1-6 have been considered but are moot in view of the new ground(s) of rejection. Regarding the limitations of the side region, examiner points out that any side of the stomach can be considered a side region. Additionally, regarding the limitation of the side region and the bottom region of the upper stomach portion, examiner points out that these locations are subjective to the point of view of the individual. For example in viewing Figures 8, 10 and 12, one notes that the location of the stomach changes throughout the procedure and so the location of the side or bottom portion will also change. Additionally, it is noted that clearly, the side region and the bottom region can overlap since the examiner can choose how big the regions are. Examiner further notes that it is the amendment to claim 1 and the addition of the limitation "to obtain an isolated upper stomach portion" and "through a side region of the isolated upper stomach portion" that is the basis for the different interpretation of the previously applied prior art.

***Conclusion***

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

- § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Elizabeth Houston whose telephone number is 571-272-7134. The examiner can normally be reached on M-F 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anhtuan Nguyen can be reached on 571-272-4963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

eh

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09/21/07

  
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SUPERVISORY PATENT EXAMINER  
9/21/07